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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Service Rules for the 746-764
and 776-794 MHz Bands, and
Revisions to Part 27 of the
Commission's Rules)

WT Docket No. 99-168

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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF KM COMMUNICATIONS, INC.

KM Communications, Inc. ("KM"), by its counsel, and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby submits these Comments in response to the NPRM¹ in the above-captioned proceeding. In the NPRM, the Commission proposes rules for the auction and use of spectrum in the 746-764 and 776-794 MHz bands (the "700 MHz Band"), the former television Channels 60-62 and 65-67 which were recently reallocated.²

1. **Introduction.** KM is the permittee or licensee of full power and low power television ("LPTV") broadcast stations, and has applications pending for additional new full power television stations that will be awarded by competitive bidding. KM participated in the Reallocation Order proceeding, filing comments and reply comments urging the Commission to

¹ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, Notice of Proposed Rulemaking, FCC 99-97 (released June 3, 1999) ("NPRM").

² See Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, Report and Order, FCC 97-42112 FCC Rcd 22953, 10 CR 648 (1998) ("Reallocation Order").

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(among other things): (i) limit use of the 700 MHz Band to commercial full power and LPTV stations until the end of the digital television ("DTV") transition; (ii) give a substantial preference for LPTV stations, and especially displaced LPTV stations, in any subsequent auction of that spectrum in their geographic market area; and (iii) treat parties with applications pending for new stations on Channels 60 to 69 equitably.³

2. General Approach for 700 MHz Band. The specific comments offered by KM herein are made with one specific goal: having already reallocated the 700 MHz Band for use for fixed and mobile services on a co-primary basis with broadcast services, the Commission should adopt rules for the 700 MHz Band which truly permit the continued broadcast use of that spectrum, rather than making broadcast uses unfeasible, or at worst impossible. KM also urges the Commission to adopt certain rules that would ease the burdens imposed on LPTV stations by the transition to DTV.

3. Spectrum Blocks. The 700 MHz Band should be licensed in 6 MHz blocks that correspond to the existing television channelization scheme (i.e., Channel 60, 746-752 MHz, would be one block, etc.). The 6 MHz spectrum requirement for the broadcast use of the allocation is well-known and established, with equipment readily available for use by the licensee and the viewing public, and therefore it would serve the public interest to group some, if not all, of the spectrum in 6 MHz blocks. In contrast, and as reflected in the exploratory language of the NPRM, the spectrum requirements for potential new fixed and mobile uses are unknown; accordingly, any channelization of the spectrum based on these unknown requirements would

³ See Comments of KM filed September 15, 1997 and Reply Comments of KM filed October 14, 1997 in ET Docket No. 97-157 (reallocation of television channels 60-69, the 746-806 MHz band).

be speculative, and would not be in the public interest. To the extent that the Commission determines that some smaller blocks of spectrum may be required, KM urges the Commission to mix the size of the spectrum blocks, with at least one or two 6 MHz blocks included in the scheme. In any such mixed channel block scheme, the 6 MHz block(s) should be at the lower frequencies, such as Channels 60 and 61, where they would be adjacent to the rest of the broadcast spectrum, to minimize interference protection requirements.

4. Paired Spectrum. KM also submits that "pairing" spectrum or spectrum blocks would make it very difficult for potential broadcasters to bid for the spectrum. With paired spectrum, broadcasters would end up with too much spectrum, and therefore would need to find an interested buyer and disaggregate the spectrum. Any party interested in acquiring paired spectrum could accomplish their goals by bidding for the two blocks of spectrum at the auction, which is much simpler than disaggregation of the spectrum after the fact -- if for no other reason than only the one party bidding need be involved. Any potential disadvantage (if any) to a party interested in paired spectrum may be addressed through the use of combinatorial bidding. To the extent that the Commission determines that it needs to pair spectrum blocks, it should do so with only a portion of the spectrum, not all of it. For example, the Commission could pair spectrum at 758-764 MHz with 788-794 MHz, in 6 MHz or even smaller blocks (as discussed above, if the Commission is going to pair spectrum blocks it will be less attractive for broadcasters, so having 6 MHz blocks would be less important for paired spectrum).

5. Geographic Service Areas. The Commission should adopt geographic service areas small enough to be of interest to and affordable for potential broadcasters, but large enough that the areas for potential interference would be minimized. For these reasons, KM

believes the geographic service areas should be no larger than the 52 Major Economic Areas ("MEAs"), and no smaller than the 172 Economic Areas ("EAs").

6. **Spectrum Caps and/or Ownership Restrictions.** The Commission should adopt spectrum caps for fixed or mobile uses of the 700 MHz Band (or apply the 45 MHz spectrum cap on mobile users) to encourage economic competition among service providers. For similar reasons, the Commission should apply its broadcast multiple ownership rules (as those rules may be amended from time to time) to broadcast users of the spectrum. Otherwise any auction of the spectrum will be dominated by existing service providers in each market, and no new competition would develop.

7. **"Safe Harbor" for Broadcast Uses.** The Commission should establish a "safe harbor" that demonstrates that "substantial service" is being provided by broadcast users of the spectrum, as has been proposed for fixed or mobile users. KM proposes that a broadcast user should be considered to be providing substantial service when it is providing at least a predicted Grade B contour signal (or its equivalent) to some substantial percentage of the population, such as more than 50% of the population, in its geographic service area, within 3 years after a license grant (unless such a signal can not be provided due to any interference protection rules that may be adopted).

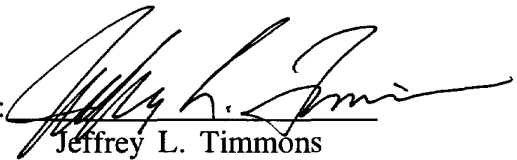
8. **Auction Provisions for Displaced LPTV Stations.** The relief adopted for LPTV stations in the DTV proceeding is of little practical use for many LPTV stations, and as a result many LPTV and TV translator stations likely will be forced off the air in order to accommodate the DTV allocation table that was developed excluding Channels 60-69. As raised by KM previously in the Reallocation Order proceeding, in any 700 MHz Band auction the Commission

should give a bidding credit to any LPTV licensee that has been or will be displaced by the transition to DTV. Alternatively, the Commission should refrain from auctioning spectrum in the 700 MHz Band until after the DTV transition has been completed in 2006, so that LPTV licensees may relocate their stations to that spectrum temporarily until spectrum becomes available in the core channels (Channels 2-59) after the DTV transition (when full power broadcasters must return their second channels).

9. Conclusion. Wherefore, the above-premises being considered, KM respectfully requests that the Commission adopt service and auction rules for the 700 MHz Band that are consistent with the comments made herein, and specifically which make the broadcast use of that spectrum feasible.

Respectfully submitted,

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